

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ARTURO C. BOLANOS,

Case No. 3:16-cv-00640-MMD-WGC

v.

**Petitioner.**

## ORDER

TIM GARRETT, *et al.*,

## Respondents.

11 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §  
12 2254 by Nevada state prisoner Arturo C. Bolanos. On November 24, 2021, the Court  
13 granted Petitioner’s motion for counsel and appointed the Federal Public Defender to  
14 represent Petitioner in this action. (ECF No. 13.) On December 20, 2021, Kimberly Anne  
15 Sandberg of the Federal Public Defender’s Office appeared as counsel on behalf of  
16 petitioner. (ECF No. 16.) The Court now sets a schedule for further proceedings in this  
17 action.

18 It is therefore ordered that counsel for Petitioner meet with Petitioner as soon as  
19 reasonably possible, if counsel has not already done so, to: (a) review the procedures  
20 applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with Petitioner, as  
21 fully as possible, the potential grounds for habeas corpus relief in Petitioner's case; and  
22 (c) advise Petitioner that all possible grounds for habeas corpus relief must be raised at  
23 this time in this action and that the failure to do so will likely result in any omitted grounds  
24 being barred from future review.

25 It is further ordered that Petitioner has 90 days from the date of this order to file  
26 and serve on Respondents a second-amended petition for writ of habeas corpus.

27 It is further ordered that Respondents have 45 days after service of an amended  
28 petition within which to answer, or otherwise respond to, the amended petition. Any

1 response filed should comply with the remaining provisions below, which are entered  
2 pursuant to Habeas Rule 5.

3 It is further ordered that any procedural defenses raised by Respondents in this  
4 case be raised together in a single consolidated motion to dismiss. In other words, the  
5 Court does not wish to address any procedural defenses raised herein either in seriatum  
6 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural  
7 defenses omitted from such motion to dismiss will be subject to potential waiver.  
8 Respondents should not file a response in this case that consolidates their procedural  
9 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §  
10 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek  
11 dismissal of unexhausted claims under § 2254(b)(2): (a) they should do so within the  
12 single motion to dismiss not in the answer; and (b) they should specifically direct their  
13 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,  
14 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
15 exhaustion, should be included with the merits in an answer. All procedural defenses,  
16 including exhaustion, instead must be raised by motion to dismiss.

17 It is further ordered that, in any answer filed on the merits, Respondents must  
18 specifically cite to and address the applicable state court written decision and state court  
19 record materials, if any, regarding each claim within the response as to that claim.

20 It is further ordered that, when Respondents file an answer or other responsive  
21 pleading, Petitioner will have 30 days after service of the answer or responsive pleading  
22 to file and serve his response.

23 It is further ordered that any additional state court record exhibits filed herein by  
24 either Petitioner or Respondents be filed with a separate index of exhibits identifying the  
25 exhibits by number. The CM/ECF attachments that are filed also must be identified by the  
26 number or numbers of the exhibits in the attachment.

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1        It is further ordered that, at this time, the parties send courtesy copies of any  
2 responsive pleading and all INDICES OF EXHIBITS ONLY to the Reno Division of this  
3 Court. Courtesy copies must be mailed to the Clerk of Court, 400 S. Virginia St., Reno,  
4 NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing  
5 address label. No further courtesy copies are required unless and until requested by the  
6 Court.

7        DATED THIS 27<sup>th</sup> Day of December 2021.



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9        MIRANDA M. DU, CHIEF JUDGE  
10      UNITED STATES DISTRICT COURT  
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